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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,463	07/21/2003	Gary Sohngen	T9918	5558
20449	7590	05/04/2005	EXAMINER	
KARL R CANNON PO BOX 1909 SANDY, UT 84091			REIMERS, ANNETTE R	
		ART UNIT	PAPER NUMBER	
		3732		
DATE MAILED: 05/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/624,463	SOHNGEN ET AL.
	Examiner	Art Unit
	Annette R. Reimers	3732

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 29 March 2005.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-30 is/are pending in the application.  
4a) Of the above claim(s) 7,14-16,18,21,22,24,25 and 28-30 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-4,9,10,12,17,19,23 and 26 is/are rejected.  
7)  Claim(s) 5,6,8,11,13,20 and 27 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 21 July 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/19/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date.       .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other:       .

**DETAILED ACTION*****Election/Restrictions***

Applicant's election with traverse of Invention I, claims 1-28 and Species I, Figures 1-2B, in the reply filed on March 29, 2005 is acknowledged. The traversal is on the ground(s) that under M.P.E.P. § 803, the entire application must be examined as a whole when there would not be a serious burden on the examiner if restriction were not required. This is not found persuasive because, "a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification or separate status in the art or a different field of search as defined in M.P.E.P. § 808.02."

It is further acknowledged that applicant believes that claims 1-6, 8-13, 17-20, 23 and 25-27 read on the elected Species I, Figures 1-2B. The examiner agrees with the applicant regarding all claims except claims 18 and 25. The elected Species, Figures 1-2B, does not have "at least one of the openings in the plurality of segments disposed at a non-perpendicular angle with respect to the longitudinal axis" or "the distal portion formed at an angle with respect to the longitudinal axis of up to approximately 10 degree" as required by claims 18 and 25, respectively.

Claims 7, 14-16, 18, 21-22, 24-25 and 28-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction/election requirement in the reply filed on March 29, 2005. The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 9-10, 12, 17, 19, 23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Roalstad et al. (U.S. Patent Number 4,262,665).

Roalstad et al. disclose a nail comprising a proximal portion and a distal portion defining a longitudinal axis (see Figure 3 below). The proximal portion comprises a plurality of segments with an opening along the longitudinal axis and a notch for receiving a tool (see Figure 3 below). In addition, at least one of the plurality of segments is rotatable with respect to the distal portion about the longitudinal axis, i.e. the plurality of segments can rotate along the threaded portion of the nail (see Figure 3 below). Furthermore, the first segment has an attachment element and is non-rotatably attached to the distal portion of the nail (see Figure 3 below).

The device further comprises a means for locking at least one rotatable segment, e.g. the plurality of segments along the threaded portion of the nail can be locked in place. The first segment and the second segment comprise a sidewall defining a chamber (see Figure 2 below). The second and third

segments comprise a connector (see Figure 2 below). The sidewalls comprise slits, and the openings are substantially oval shaped (see Figure 3 below).

Fig. 2

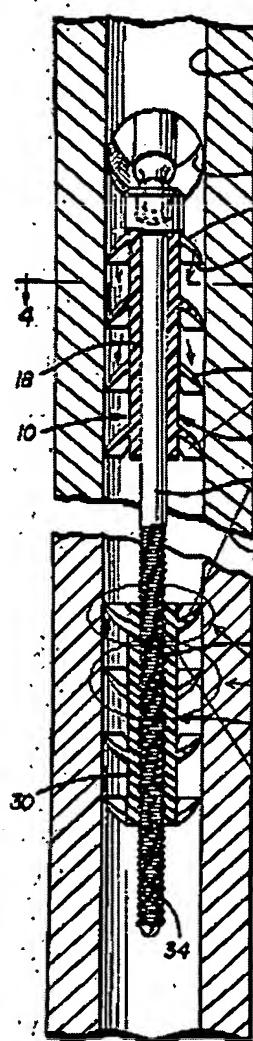
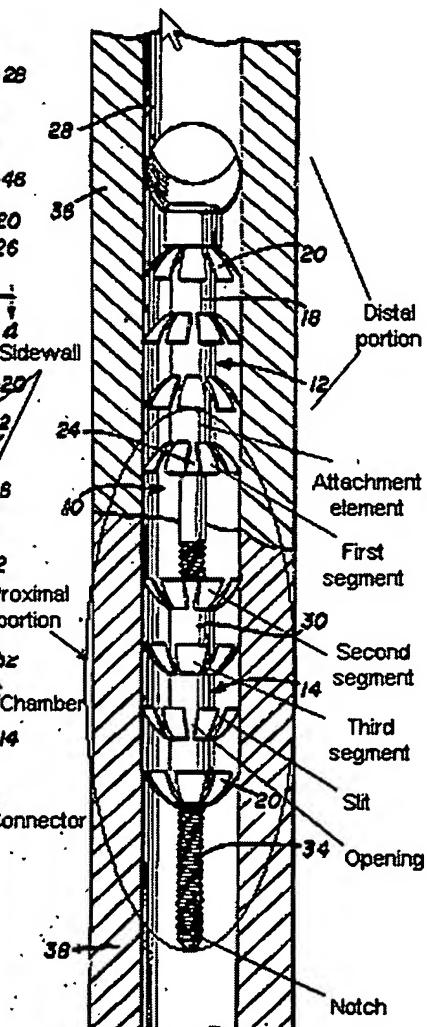


Fig. 3



#### ***Allowable Subject Matter***

Claims 5-6, 8, 11, 13, 20 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR



EDUARDO C. ROBERT  
PRIMARY EXAMINER